## CCRB INVESTIGATIVE RECOMMENDATION

|                               |  | T  | T                       |            |           |              |              |     |          |
|-------------------------------|--|--|-------------------------|------------|-----------|--------------|--------------|-----|----------|
| Investigator:                 |  | Team:  | CCRB Case #:            | ☑          | Force     | $\checkmark$ | Discourt.    |     | U.S.     |
| Moriba Geoffroy               |  | Squad #03  | 202300635               | ☑          | Abuse     |              | O.L.         |     | Injury   |
| Incident Date(s)              |  | Location of Incident:                            |                         |            | 18 N      | 10. S0       | OL           | P   | recinct: |
| Saturday, 01/14/2023 12:53 AM |  | Crotona Parkway and I<br>48th Precinct stationho |                         |            | 7/1       | 4/202        | 4            |     | 48       |
| Date/Time CV Reported         |  | CV Reported At:                                  | How CV Reported         | :          | Date/Time | e Rece       | eived at CCI | RB  |          |
| Mon, 01/23/2023 10:27 PM      |  | CCRB   | On-line website         |            | Mon, 01/2 | 23/202       | 23 10:27 PN  | 1   |          |
| Complainant/Victim            | Type   | Home Addre                                       | ess                     |            |           |              |              |     |          |
|                               |  |  |                         |            |           |              |              |     |          |
|                               |  |  |                         |            |           |              |              |     |          |
| Witness(es)                   |  | Home Addre                                       | ess                     |            |           |              |              |     |          |
|                               |  |  |                         |            |           |              |              |     |          |
|                               |  |  |                         |            |           |              |              |     |          |
| Subject Officer(s)            | Shield   | TaxID  | Command                 |            |           |              |              |     |          |
| 1. PO Richard Castellano      | 25087  | 957429   | 044 PCT                 |            |           |              |              |     |          |
| 2. Officers                   |  |  |                         |            |           |              |              |     |          |
| 3. PO Jorge Flores            | 07680  | 954816   | 044 PCT                 |            |           |              |              |     |          |
| 4. LT Michael Bowman          | 00000  | 939932   | 040 PCT                 |            |           |              |              |     |          |
| Officer(s)                    | Allegation   | on .   |                         |            | Inv       | estiga       | tor Recon    | nme | ndation  |
| A . Officers                  | Abuse: C<br>was an o   | Officers stopped the vehi ccupant.               | cle in which § 87(2)(b) |            |           |              |              |     |          |
| B . PO Jorge Flores           | Abuse: Police Officer Jorge Flores threatened to arrest \$87(2)(b)           |  |                         |            |           |              |              |     |          |
| C . PO Jorge Flores           | Force: Po  | olice Officer Jorge Flore                        | s used physical forc    | e          |           |              |              |     |          |
| D . LT Michael Bowman         | Force: Lieutenant Michael Bowman used physical force                         |  |                         |            |           |              |              |     |          |
| E . PO Jorge Flores           | Force: Police Officer Jorge Flores used physical force against [887(2)(6)]   |  |                         |            |           |              |              |     |          |
| F . PO Richard Castellano     | Force: Po  | olice Officer Richard Ca<br>87(2)(6)             | stellano used physic    | al f       | orce      |              |              |     |          |
| G . PO Richard Castellano     | Force: Police Officer Richard Castellano used a chokehold against \$87(2)(6) |  |                         |            |           |              |              |     |          |
| H . PO Richard Castellano     | Force: Po  | olice Officer Richard Ca<br>37(2)(6)             | stellano used physic    | al f       | orce      |              |              |     |          |
| I . Officers                  | Force: O   | fficers restricted                               | breathing               | <b>3</b> . |           |              |              |     |          |
| J. Officers                   | Force: O   | fficers used physical for                        | ce against § 87(2)(6)   |            |           |              |              |     |          |
| K . LT Michael Bowman         | Force: La  | ieutenant Michael Bown<br>87(2)(6)               | nan used physical fo    | rce        |           |              |              |     |          |

| Officer(s)                | Allegation  | Investigator Recommendation |
|---------------------------|---|-----------------------------|
| L . PO Richard Castellano | Abuse: Police Officer Richard Castellano threatened with the use of force.      |                             |
| M . PO Richard Castellano | Force: Police Officer Richard Castellano used physical force against \$87(2)(6) |                             |
| N . PO Jorge Flores       | Abuse: Police Officer Jorge Flores threatened to arrest \$87(2)(6)              |                             |
| O . PO Jorge Flores       | Discourtesy: Police Officer Jorge Flores spoke discourteously to § 87(2)(b)     |                             |
| P . PO Jorge Flores       | Abuse: Police Officer Jorge Flores seized property.                             |                             |

## **Case Summary**

On January 23, 2023, \$87(2)(6) filed this complaint on behalf of herself and with the Civilian Complaint Review Board via the online website. On January 14, 2023, at approximately 12:53 a.m., \$87(2)(6) was driving along Crotona Parkway and East 180th Street in the Bronx, with occupants §87(2)(6) Officers of the 44<sup>th</sup> Precinct stopped § 87(2)(b) and § 87(2)(b) vehicle and PO Jorge Flores of the 44th (Allegation A: Abuse of Authority; \$87(2)(g) Precinct threatened to arrest him (Allegation B: Abuse of Authority; 1870) PO Flores physically removed § 87(2)(6) from the vehicle (Allegation C: Abuse of Authority; Once out of the vehicle, Lieutenant Michael Bowman, PO Flores, and PO Richard Castellano of the 44<sup>th</sup> Precinct punched him while on the ground (Allegations D-E: Force; § 87(2)(g) Allegation F: Force; § 87(2)(g) PO Castellano applied a chokehold to \$87(2)(6) (Allegation G: Force; \$87(2)(g) PO Castellano continued to punch § 87(2)(6) while on the ground (Allegation H: Force; §87(2)(g) stated that the officers being on top of him restricted his breathing (Allegation I: Force; Officers kicked \$87(2)(b) (Allegation J: Force; \$87(2)(g) was being placed in a transport vehicle, LT Bowman then pushed (Allegation K: Force; §87(2)(g) and she fell to the ground. PO Castellano pulled out his Taser, pointed it at \$87(2)(b) (Allegation L: Abuse of Authority; § 87(2)(g) and placed his knee on her back (Allegation M: Force; \$87(2)(g) PO Flores entered \$87(2)(6) vehicle, threatened to arrest [887(2)(6) (Allegation N: Abuse of Authority; \$87(2)(9) spoke discourteously towards him (Allegation O: Discourtesy; \$87(2)(g) and seized his vehicle (Allegation P: Abuse of Authority; \$187(2)(2) § 87(2)(b) and § 87(2)(b) were arrested during the incident [BR 34-35]. Body worn camera (BWC) video was received from NYPD Legal [BR 1]. Cellphone video footage was provided by §87(2)(6) a civilian witness to the encounter [BR 2]. Findings and Recommendations Allegation (A) Abuse of Authority: Officers stopped the vehicle in which [887(2)(6)] was an occupant. Allegation (B) Abuse of Authority: Police Officer Jorge Flores threatened to arrest Allegation (C) Force: Police Officer Jorge Flores used physical force against said testified that he was driving along East 180<sup>th</sup> Street with his family. He was the driver and in the vehicle with him was his father, \$87(2)(b) his mother, § 87(2)(6) and his sister's friend, whom he only referred to his sister, § 87(2)(b) as \$37(2)(a) While driving northbound along East 180th Street, \$37(2)(b) saw a police vehicle driving southbound. He saw the police vehicle make an abrupt U-turn in his rear view and side mirror. The police vehicle began driving behind them. See stopped the vehicle and pulled over at Crotona Parkway and East 180<sup>th</sup> Street. The police vehicle stopped behind him and they activated their turret light and siren. Approximately four to five officers exited and surrounded his vehicle. PO Flores came to the driver's side window and asked for his license and insurance. asked PO Flores why he was being pulled over and he could not give him an answer. PO Flores walked to the front of the vehicle and looked at the headlights. He returned to the driver's side window and said he was stopping (1970) because his headlights were not operational. told PO Flores he did not have any license or registration for the vehicle.

CCRB Case # 202300635

said he was not driving, but travelling and did not need a license to travel. PO Flores looked at LT Bowman, who said, "Get him out of the vehicle." said he was going to put his hand on the steering wheel of the vehicle and was not going to do anything. PO Flores placed his hand over the window, into the car and opened the driver's side door. po Flores placed his hand over the window, into the car and opened the driver's side door. PO Flores probable testified that PO Flores reached around him and took off his seatbelt. PO Flores, PO Castellano, and LT Bowman began pulling out of the vehicle. PO Flores grabbed and pulled his legs, PO Castellano grabbed and pulled his waist, and LT Bowman grabbed and pulled his arms. He was scared and began screaming for help. The officers used one continuous pull to take him out of the vehicle. Said he was resisting by holding onto the steering wheel. Outside of the vehicle, PO Castellano grabbed onto his legs, bending them backwards, and swept him off the floor. The officers then held onto his arms and placed him on the floor. [BR 3].

Contact attempts were exhausted to second and therefore no statement could be obtained from them (See IAs for contact attempts).

At 1:00 minutes, PO Flores' BWC footage shows him approaching a stopped vehicle and asking for the driver's license, insurance, and registration. [87(2)0] asks why he is being stopped and refuses to give PO Flores his documentation. At 1:36, PO Flores walks to the front of the vehicle. The left headlight is not functional in the video. PO Flores walks back to the driver and says the stop is for a defective headlight. He continues to ask for [87(2)0] documents, and he refuses to provide them. At 2:00, PO Flores says to open the door and [87(2)0] refuses. He continues to ask for his documents and [87(2)0] says he does not have them. PO Flores asks if he is going to open the door and [87(2)0] says no. At 2:50, PO Flores says, "Either you're going to give me your license or I'm going to take you back to the Precinct." At 3:40, LT Bowman says to take [87(2)0] out of the vehicle. PO Flores opens the door and [87(2)0] stays in the vehicle holding onto the steering wheel. PO Flores grabs [87(2)0] by his arms and legs and pulls him out of the vehicle onto the ground [BR 4].

PO Flores testified that he was in a police vehicle travelling eastbound on East 180th Street. He saw a vehicle driving westbound on East 180th Street and observed a Vehicle Traffic Law (VTL) infraction, which was a defective headlight. PO Flores made a U-turn to follow the vehicle and activated his turret lights and siren. The vehicle pulled over and he approached the driver's side window. He asked the driver, save for his license, registration, and insurance card. asked why he was being stopped. PO Flores walked up to the front of the vehicle with his BWC activated to show that the headlight was defective. He walked back to the driver's side window and informed § 87(2)(6) that he had a defective headlight. PO Flores asked again for his driver's information and § 87(2)(6) refused. § 87(2)(b) said he did not have his ID. PO Flores twice to provide his name and date of birth, and if he lied, he could arrest him for false impersonation. § 87(2)(b) continued not to provide his credentials. PO Flores called over his supervisor, LT Bowman, and told him that the driver was not complying with his orders and refused to provide his credentials. LT Bowman permitted him to remove \$87(2)(b) vehicle. PO Flores asked \$87(2)(6) to step out of the vehicle numerous times and he refused IBR 61.

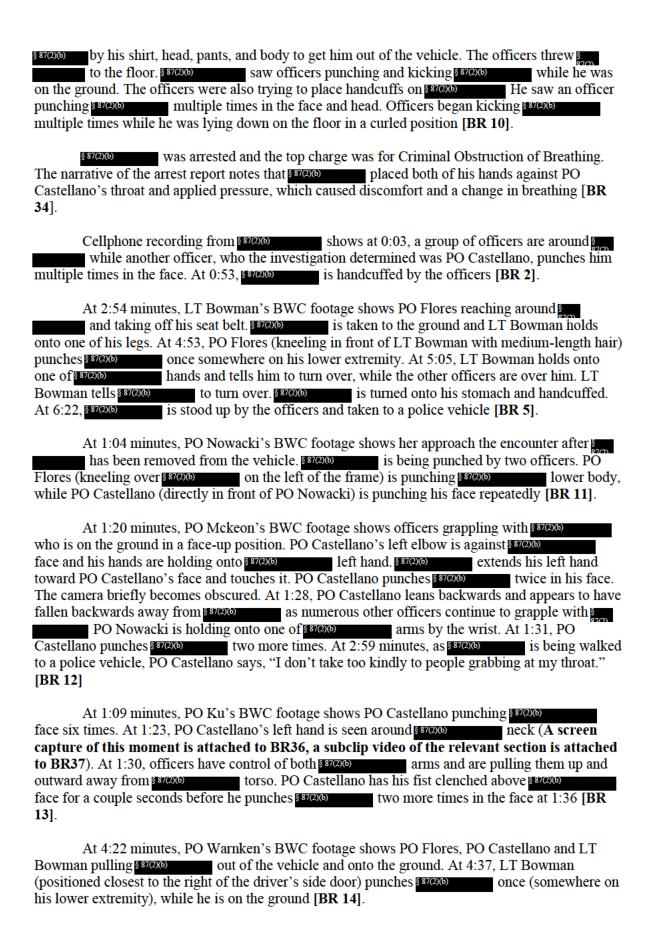
The Vehicle Report associated with this incident shows that the vehicle was stopped for a violation of VTL section 375 – "faulty/unapproved headlight" [BR 7].

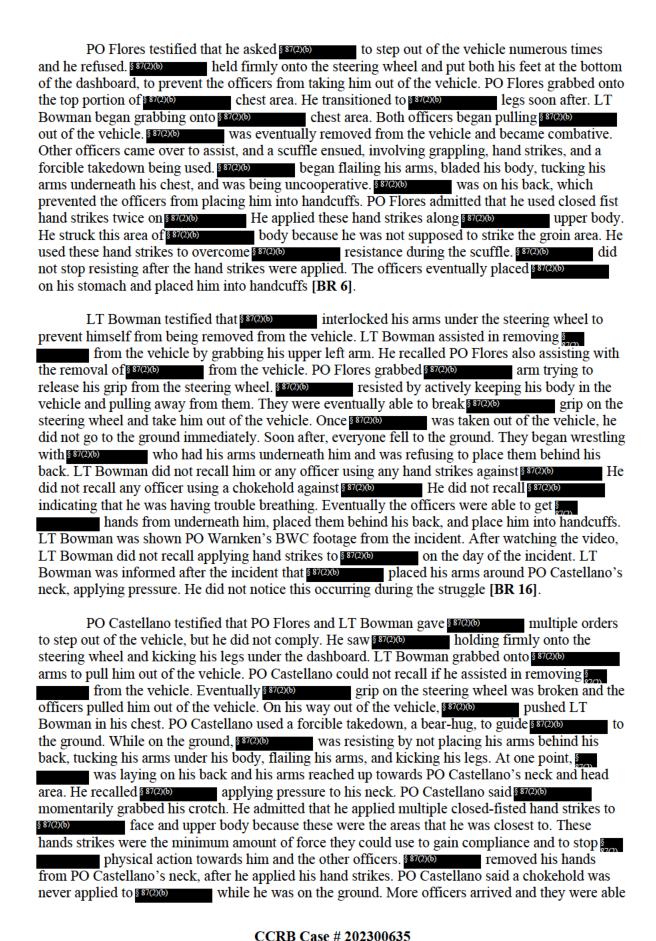
New York State Vehicle and Traffic Law section 375, subsection 2(a)1 requires vehicles to have at least two lighted head lamps on the front, one on each side, having light sources of equal power [BR 8].

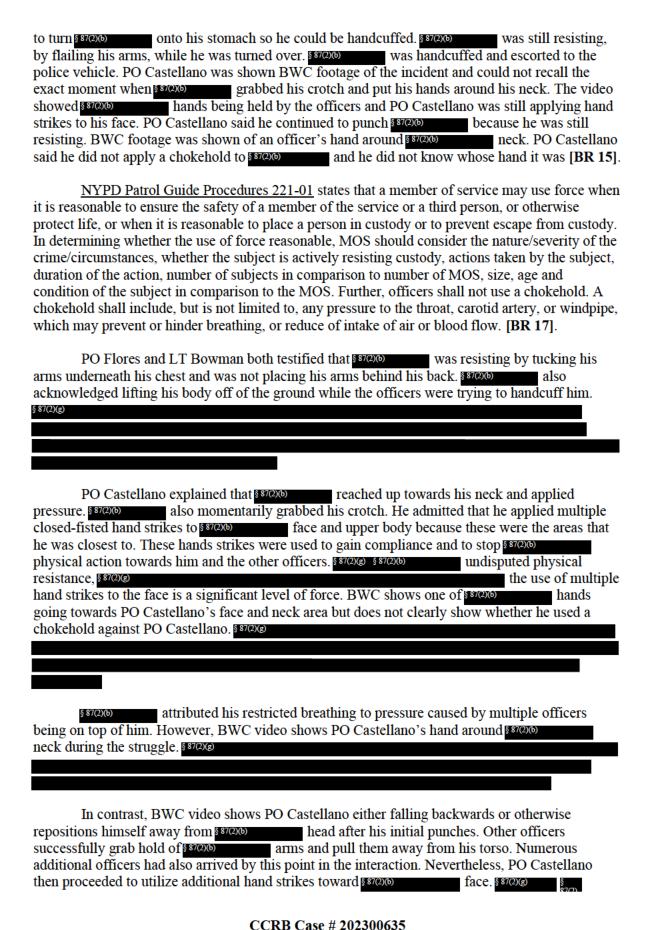
<u>NYPD Patrol Guide Procedure 209-09</u> states that when issuing a summons returnable to the Traffic Violations Bureau, officers may remove the violator to the command for investigation if doubt concerning identity exists [BR 9].

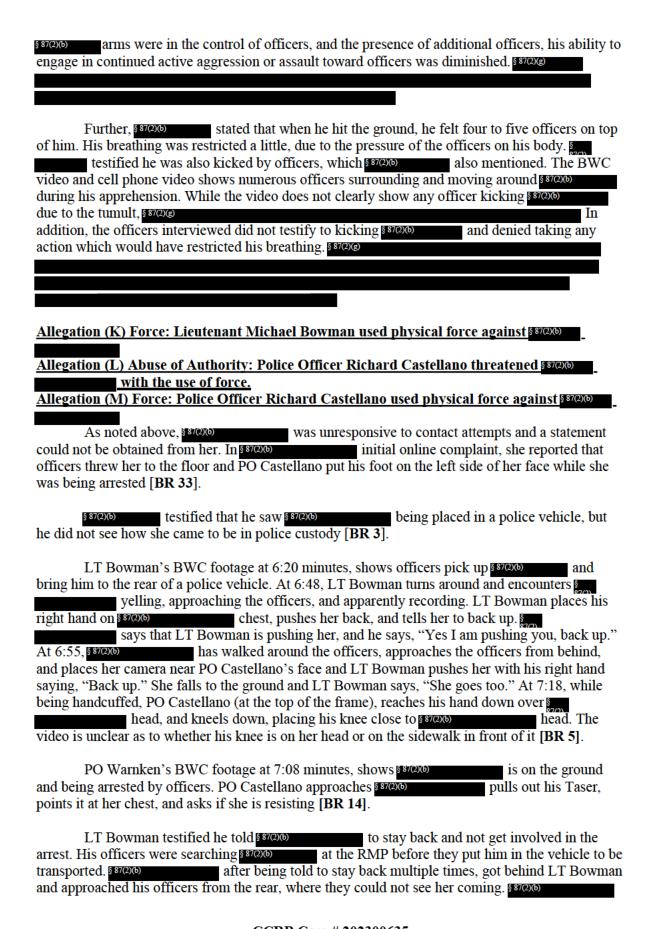
NYPD Patrol Guide Procedures 221-01 states that a member of service may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force reasonable, MOS should consider the nature/severity of the crime/circumstances, whether the subject is actively resisting custody, actions taken by the subject, duration of the action, number of subjects in comparison to number of MOS, size, age and condition of the subject in comparison to the MOS. Further, officers shall not use a chokehold [BR 17].

| § 87(2)(g)   |   |
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| § 87(2)(g) § 87(2)(b)  | repeated refusal to comply with commands to exit the vehicle,   |
|  |   |
| Allegation (D) Force: Lieute   | enant Michael Bowman used physical force against swow   |
|  | Officer Jorge Flores used physical force against \$87(2)(0) Officer Richard Castellano used physical force against \$87(2)(0)   |
| Allegation (G) Force: Police   | Officer Richard Castellano used a chokehold against   |
| Allegation (I) Force: Officei  | r Richard Castellano used physical force against sectors breathing.  rs used physical force against sectors.  |
| of the fall caused him to go in<br>turned on his side, and his arm<br>on top of him. The officers we<br>and kicking him while on the<br>mouth, eyes, temple, jaw, and<br>placed into handcuffs and pict<br>vehicle and the door was lock | nat he landed on his stomach and his face hit the ground. The impact ato shock and he tried to get up. He lifted his body off the ground, ans were placed behind his back. If the felt four to five officers here trying to place him back onto his stomach. They began punching floor. He was punched and kicked approximately 20 times in his a groin. He could not see which officers were assaulting him. He was ked up by the officers by his arms. He was placed into the police was informed he was arrested for choking an officer. [BR 3]. |
| testified that he was walking a<br>and East 180 <sup>th</sup> Street. He notic<br>the incident, he saw [87(2)(6)]<br>pulled out his cellp  | lian witness with no known relationship to any of the parties involved, across the street to go to a grocery store located at Crotona Parkway ced a commotion involving over 50 police officers. As he got closer to being punched as he was being pulled out of the vehicle.  The saw two officers, whom he could not out of the driver's side of the vehicle. Both officers grabbed   |

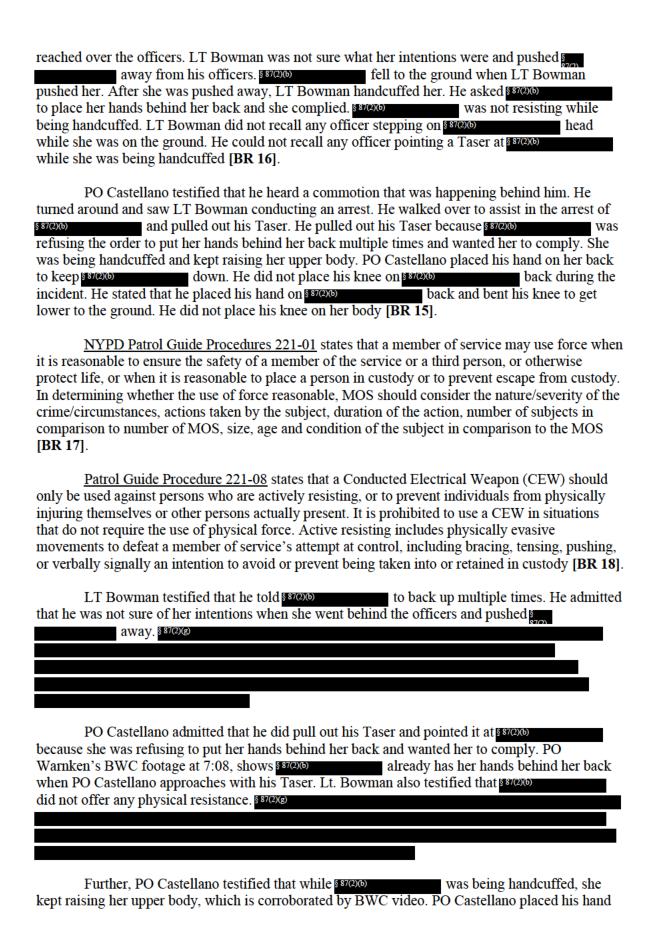




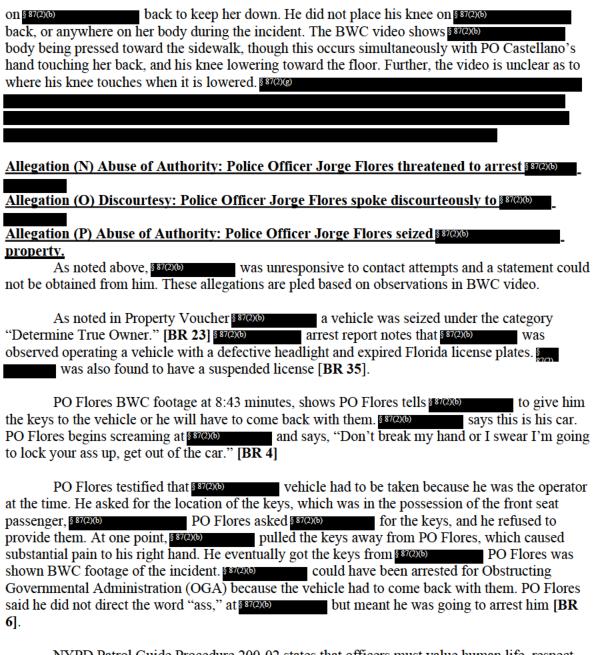




CCRB CTS – Confidential Page 7



CCRB Case # 202300635



<u>NYPD Patrol Guide Procedure 200-02</u> states that officers must value human life, respect the dignity of each individual and render services with courtesy and civility [BR 19].

NYPD Patrol Guide Procedure 218-19 directs an occupied vehicle be taken into custody if the true owner cannot be determined and immediate arrest is not warranted [BR 20].

<u>Penal Law 195.05</u> states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function [BR 21].

In <u>DCT case 2018-18951</u>, the tribunal held that profane remarks made in the context of a violent or stressful encounter do not constitute misconduct [BR 22].

| fo | Although PO Flores testified that when he asked for the car keys and he fused to provide them, he could have arrested him for OGA, it was not visible on the BWC otage if physically interfered with PO Flores' ability to get the keys, including alling away from him and causing pain to PO Flores' hand. |
|----|--|
|    |  |
|    |  |
|    |  |
| de | As detailed in voucher \$87000 the vehicle was seized until the true owner could be termined. \$87000  |
| ac | termined.  |
|    |  |
|    |  |
|    | Civilian and Officer CCRB Histories  |
| •  | This is the first CCRB complaint to which \$87(0)(0) has been a party [BR 24].   |
| •  | This is the first CCRB complaint to which serves has been a party [BR 25].   |
| •  | This is the first CCRB complaint to which \$870,000 has been a party [BR 26].  |
| •  | PO Flores has been a member of service for 10 years and has been a subject in 12 other CCRB  |
|    | complaints and 27 allegations, of which nine were substantiated.:  |
|    | <ul> <li>201608051 involved substantiated allegations of refusal to obtain medical treatment against</li> <li>PO Flores. The Board did not recommend discipline and the NYPD imposed Formalized</li> </ul>   |
|    | Training.  |
|    | <ul> <li>201808686 involved substantiated allegations of discourteous word against PO Flores. The</li> </ul>   |
|    | Board did not recommend discipline and the NYPD imposed Instruction.   |
|    | o 201808753 involved substantiated allegations of discourteous word against PO Flores. The   |
|    | Board did not recommend discipline and the NYPD imposed Instruction.   |
|    | o 201901734 involved substantiated allegations of threat of arrest against PO Flores. The  |
|    | Board did not recommend discipline and the NYPD imposed Formalized Training.  • 201906935 involved substantiated allegations of failure to provide RTKA card and refusal   |
|    | o 201906935 involved substantiated allegations of failure to provide RTKA card and refusal to obtain medical attention against PO Flores. The Board did not recommend discipline and   |
|    | the NYPD imposed Command Discipline A.   |
|    | o 202201741 involved substantiated allegations of threat of force (three times) against PO   |
|    | Flores. The Board recommended Command Discipline B and the NYPD did not impose   |
|    | any penalty.   |
| •  | PO Castellano has been a member of service for eight years and has been a subject in eight   |
|    | other CCRB complaints and 11 allegations, of which two were substantiated.:  |
|    |  |
|    |  |
| •  | LT Bowman has been a member of service for 17 years and has been a subject in eight other  |
|    | CCRB complaints and 22 allegations, of which four were substantiated.:   |
|    | o 202000753 involved substantiated allegations of failure to provide RTKA card against LT  |
|    | Bowman. The Board recommended Command Discipline B and the NYPD did not impose any penalty.  |
|    |  |
|    |  |

|                          | Mediation Civ                  | vil, and Criminal Histories        |                         |
|--------------------------|--------------------------------|------------------------------------|-------------------------|
| This compla              | aint was not suitable for med  |                                    |                         |
|                          |                                | ty Office of the Comptroller has n | o record of a Notice of |
|                          |                                | in regard to this incident [BR 27] |                         |
|                          |                                | ty Office of the Comptroller has n |                         |
|                          |                                | gard to this incident [BR 28].     | o record or a reduce or |
|                          |                                | rk City Office of the Comptroller  | has no record of a      |
|                          |                                | in regard to this incident [I      |                         |
| • [§ 87(2)(b)] [§§ 86(1) |                                | in regard to this mercon [2        | ,                       |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
|                          |                                | RPBP History                       |                         |
| This compla              | aint did not contain any alles | gations of Racial Profiling/Bias-B | ased Policing.          |
|                          |                                | 5                                  |                         |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
|                          |                                |                                    |                         |
| Squad:                   | 3                              |                                    |                         |
|                          |                                |                                    |                         |
| <b>T</b> 15 1            | M 1 C C                        |                                    | 4/2/2024                |
| Investigator:            | Moriba Geoffroy                | Inv. Moriba Geoffroy               | 4/2/2024                |
|                          | Signature                      | Print Title & Name                 | Date                    |
|                          |                                |                                    |                         |
| Sanad Leader             | Rolando Vasquez                | IM Rolando Vasquez                 | 4/3/2024                |
| Squad Deader.            | Signature                      | Print Title & Name                 | Date                    |

§ 87(2)(g)